



## **SB 10-34**

### **Pesticide Act Refillers Requirements**

*The Colorado Department of Agriculture respectfully requests your support of  
Senate Bill 10-34*

**Issue:** Recent changes in the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) require the State of Colorado to have the authority to inspect pesticide establishments that refill pesticide containers and ensure they are in compliance with the federal residue removal requirements. Failure to have this authority threatens Colorado's ability to maintain primacy to enforce pesticide use and certify pesticide applicators.

**Proposed Solution:** Expand CDA's authority in the Pesticide Act to inspect, enforce and ensure producer refiller establishments are in compliance with the pesticide residue removal requirements outlined in FIFRA.

- The Federal Container Containment Rule, in FIFRA, Section 19(f), was finalized in August 2006. The Rule requires States to have an adequate program to ensure compliance of FIFRA, Section 19(f), Residue Removal Requirements, by August 2011 or they may not exercise primary enforcement responsibility of pesticide use and may not certify pesticide applicators.
- Amendments to the Pesticide Act will give CDA the authority to enforce the provisions of FIFRA, pertaining to refilling activities, and inspect pesticide producer refiller establishments to ensure compliance. This will ensure CDA does not lose its authority to regulate pesticide use and certify pesticide applicators.
- There is no fiscal impact to CDA or producers associated with this bill and all inspections will be absorbed within CDA's current inspection activities.
- Legislative changes to the Pesticide Act to meet the federal provisions in SB-34:
  - **Section 2:** Definitions of refillers and refillable containers.
  - **Section 3:** Provides CDA jurisdiction over refilling activities, when done for sale or distribution.
  - **Section 12:** Establishes record keeping and reporting requirements in Rule.
  - **Section 13:** Provides the CDA the authority to establish Rules in relation to complying with the residue removal provisions.
  - **Section 16:** Declares certain acts by pesticide refillers to be unlawful.

**Additional changes to the Pesticide Act are to improve clarity and efficiency within the program and are outlined below.**

**Issue:** CDA currently must register certain pesticide products that are exempt from pesticide registration by EPA.

**Proposed Solution:** In Section 4; allow the CDA the discretion to exempt certain pesticides from registration if EPA has also exempted them in accordance with FIFRA.

- EPA's definition of a pesticide is much broader than CDA's and goes into great detail on the types of products that, although the product meets its definition of a pesticide, it will exempt from pesticide registration if it meets certain criteria outlined in FIFRA.
- Examples of the types of exemptions EPA allows are products used to sterilize medical devices, animal drugs or other products already adequately regulated by another agency (i.e.: cold sterilants or certain types of insect repellants regulated under FDA).
- CDA currently can not exempt these types of pesticide products from Colorado's pesticide registration requirements because CDA's definition of a pesticide is broader than EPA's definition. Matching EPA's definition would require extensive changes throughout the Pesticide Act and Pesticide Applicators' Act that are more efficiently done through Rule making.
- The proposed change allows the CDA the discretion to exempt certain pesticides from registration if EPA has also exempted them in accordance with FIFRA.

**Issue:** Currently the Pesticide Act requires all registrants to submit inert ingredient information in their registration application. In many cases, the applicant is licensing the pesticide product from the manufacturer, who does not allow direct access to the inert ingredient information. Since this information cannot be included with the application, the registration process is delayed, which decreases CDA's efficiency in processing registration applications in a timely manner. This prevents the registrant from being able to market and sell their product in the state in a timely manner.

**Proposed Solution:** Under Section 5; allow the commissioner the authority to waive the requirement that a person applying to register a pesticide must supply a statement of all inert ingredients.

- Colorado is one of only six states that require complete inert ingredient information for each pesticide formulation prior to state registration.
- The current statutory requirement results in delays in approval for over 16% of applications due to applicant's inability to obtain the inert information from the manufacturer. Waiving this requirement will allow CDA to expedite pesticide registrations and save CDA resources.

- The current provision limits CDA's ability to adopt electronic submissions of pesticide registrations, since formulation information is considered confidential business information.
- The original purpose of this provision was to be able to provide inert ingredient information to poison control centers and emergency room physicians when needed for medical emergencies. CDA has never had a request for this information in over 20 years and can not provide the information after normal working hours.
- Poison control centers and emergency room physicians can and do access this inert ingredient information directly from the manufacturer.

**Issue:** Pesticide and device registrations expire on the calendar year; during this period over 11,000 products must be renewed which causes delays in processing registrations in a timely manner. Applications made anytime after the beginning of the year do not have a full twelve month registration period.

**Proposed Solution:** Under Sections 5 and 9; allow the commissioner to set by rule the date on which registrations of pesticides and devices expire.

- This will allow for increased efficiency within the Department by, for example, adjusting renewal dates to distribute workload throughout the year.
- CDA can allow a pesticide registrant to renew its pesticide registration one full year after the date of acceptance, rather than on the current calendar year; giving the registrant a full year registration in every case.

**Issue:** Repeated provisions within the Act.

**Proposed Solution:** Under Sections 6 and 8; delete 35-9-107(3) and 35-9-111(3) redundant provisions stating that applicants must pay a penalty fee when cease-and-desist orders are issued for distribution of an unregistered pesticide or unregistered device.

- The current provisions in 35-9-107(3) and 35-9-111(3) state that distributing an unregistered pesticide or device after a cease and desist order has been issued be met with a penalty fee, outlined in 35-9-121, in addition to the application fee.
- A fee to register a pesticide is already required in 35-9-107(2) and 35-9-111(2). 35-9-121(2)(b)(II) provides the CDA the authority to assess a penalty fee for any violation of the Act. The two provisions above are therefore redundant and confusing.

**Issue:** Clean up language in 35-9-109, Confidentiality.

**Proposed Solution:** Under Section 7; clarify that the confidentiality provisions apply only to inert ingredients.

- The confidentiality provisions currently outlined in 35-9-109 require CDA to keep the active ingredient and inert ingredients submitted to CDA for each pesticide registration confidential.
- Active ingredient information and the percentage contained within the product is required under FIFRA to be on the label of the product for the public's general knowledge and is therefore not confidential.
- The inert ingredient specifics are considered proprietary and each specific inert is not required to be listed on the label; only the total percentage of inert ingredients contained within the product are noted on the label.
- The proposed change clarifies that only the inert ingredient information is considered confidential business information that CDA shall not release.

**Issue:** Clean up confusing language and correct outdated verbiage in the Pesticide Act that no longer reflects CDA's procedures due to advances in technology.

**Proposed Solution:** Section 10; reword current language so it is clear that a registrant must renew their pesticide product's registration on or before the expiration date. Under Sections 10 and 11; change the current language to require applications for renewal of pesticide and device registration or pesticide dealer license to be "received", rather than postmarked, by the date specified by the commissioner.

- With advances in technology CDA receives many registrations and dealer renewals via FedEx or UPS, rather than through the postal service. Therefore in many instances there is no postmark on the renewal documents.
- The proposed change follows CDA's current business procedure that when no postmark is present on the renewal application, CDA uses the date received to determine if the renewal application was received before or after the registration or license expiration.
- This will allow CDA the flexibility to remain in sync with the regulated community's business procedures and to move toward electronic renewals in the future.

**Issue:** Current language is confusing by stating that a pesticide dealer license shall expire on January 1 of each year, in 35-9-115(3), and in 35-9-116(3) it states the license shall be automatically "revoked" if the renewal application is not received prior to the expiration date.

**Proposed Solution:** Under Section 11; clarify that if an application for renewal of a pesticide dealer license is not received prior to the expiration date or within the 30 day grace period the

license shall not be renewed and the dealer must apply for a new license, rather than automatic revocation of the license.

- Use of the term “automatically revoked” is confusing when the statute already states that the license shall expire annually.
- This change will reflect CDA’s current business procedures.

**Issue:** An outdated and incorrect reference to a FIFRA rule in the Pesticide Act.

**Proposed Solution:** Under Section 14; cite the correct provision in the Federal Rule that guides the CDA on its determination of what pesticide products would be considered highly toxic.

**Issue:** It currently is only a violation for licensed pesticide dealers, regulated under the Pesticide Act, to make false statements to the Commissioner in any record, invoice, report or application required under the Act. This violation does not apply to any other persons regulated under the Pesticide Act.

**Proposed Solution:** Under Section 15; add to the list of unlawful acts the making of a false statement by any person on an invoice, record, report, or application required under the Act or under any rule promulgated pursuant to the Act unlawful. In addition list the appropriate provisions as a deceptive trade practice under the "Colorado Consumer Protection Act".

- The current violation in the pesticide act only applies to licensed pesticide dealers, but should also apply to any person who is required to submit documents or keep records under the Pesticide Act, including pesticide registration applicants.
- Failure to correct this in the Act will allow a person to falsify their records and reports with no repercussions for doing so. This in certain circumstances is also a deceptive trade practice under the Colorado Consumer Protection Act.